

LIBRARY
SUPREME COURT. U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. ~~614~~ 25

FEDERAL LAND BANK OF WICHITA, PETITIONER,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF KIOWA, STATE OF KANSAS, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF KANSAS

PETITION FOR CERTIORARI FILED DECEMBER 29, 1960
CERTIORARI GRANTED MARCH 20, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 614

FEDERAL LAND BANK OF WICHITA, PETITIONER,

vs.

**BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF KIOWA, STATE OF KANSAS, ET AL.**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF KANSAS**

INDEX

Original Print

Proceedings in the Supreme Court of the State of Kansas		
Abstract of appellant	1	1
Petition	2	1
Exhibit 1—Personal property tax warrant, State of Kansas, Kiowa County, SS., No. 896	6	7
Exhibit 2—Oil and gas properties and produc- tion, Treasurer's Office, Kiowa County	7	8
Answer of defendants	8	8
Petition by Attorney General of State of Kansas for leave to intervene	8	9
Order authorizing intervention by the State	9	9
Answer of intervener	9	9
Reply of plaintiff to answer	13	13
Plaintiff's evidence	14	14

	Original	Print
Abstract of appellant—Continued		
Defendant's evidence	16	15
Testimony of H. A. Beverlin	16	15
Paul Buser	17	17
Richard Janson	19	18
Harold Herd	20	19
Richard Janson (recalled)	20	19
Plaintiff's suggested findings and conclusions	21	19
Plaintiff's motion to vacate conclusions and to make additional findings and conclusions	23	21
Plaintiff's motion for new trial and overruling thereof	25	23
Journal entry of judgment	25	23
Findings of fact	26	24
Conclusions of law	29	27
Notice of appeal	32	29
Plaintiff's Exhibits:	35	30
Exhibit 1—Petition in foreclosure case No. 4444	35	30
Exhibit 2—Journal entry of judgment in fore- closure case	35	30
Exhibit 3—Order of sale and sheriff's return	35	30
Exhibit 4—Copy of sheriff's deed	36	30
Exhibit 5—Copy of resolution of board of directors	36	30
Defendant's exhibits:	36	31
Exhibit 1—Mortgage from George Noland to Federal Land Bank	36	31
Exhibit 2—Partial satisfaction of judgment	36	31
Exhibit 3—Approval of sheriff's sale	37	31
Exhibit 4—Certificate of purchase to Federal Land Bank	37	31
Exhibits 10, 10A and 10B—Record of pay- ments to Federal Land Bank	37	31
Exhibit 11—Deed from Federal Land Bank to Richard P. Janson	37	32
Appellant's counsel's certificate to record	38	32
Specification of errors	38	32

INDEX

iii

	Original	Print
Counter abstract of appellees	41	33
Appellees' evidence	41	33
Testimony of H. A. Beverlin	41	34
Richard Janson	41	34
Paul A. Buser	42	34
Richard Janson	43	35
Argument in support of motion for new trial	43	35
Appellees' counsel's certificate to record	45	37
Opinion, Price, J.	47	38
Motion for extension of time to file motion for re- hearing	58	52
Order allowing motion for extension of time to file motion for rehearing	59	53
Order denying motion for rehearing	61	53
Clerk's certificate (omitted in printing)	63	53
Order allowing certiorari	64	54

[fol. A] . [File endorsement omitted]

[fol. 1]

**IN THE SUPREME COURT OF THE
STATE OF KANSAS**

No. 41,842

THE FEDERAL LAND BANK OF WICHITA, a Corporation of
Wichita, Kansas, Appellant,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA,
STATE OF KANSAS; BEN H. PAXTON, Sheriff; ALICE
CRONIC, County Treasurer; and EUNICE RICH, Clerk of
the District Court; THE STATE OF KANSAS, Intervener,
Appellees.

Appeal From the District Court of Kiowa County, Kansas
Honorable Ernest M. Vieux, Judge

Abstract of Appellant—Filed January 5, 1960

This action was filed by the appellant on August 29, 1958, for the purpose of enjoining and restraining the appellees, exclusive of the Intervener, from taking any further action in connection with the collection or enforcement of certain personal property taxes levied and assessed against it. Relief prayed for was predicated on the fact that appellant is a Federal instrumentality, and [fol. 2] as such is exempt from payment of personal property taxes assessed against it by the State or any political subdivision thereof.

PETITION

Plaintiff for its cause of action against the defendants and each of them alleges and states:

I.

That said plaintiff is a corporation duly created, organized, and existing under and by virtue of an Act of Congress, entitled "The Federal Farm Loan Act," approved July 17, 1916, and acts amendatory thereto; that it maintains its principal office and place of business in the City of Wichita, State of Kansas, and that it is authorized and chartered to transact and do business in the States of Kansas, Colorado, Oklahoma and New Mexico;

That the defendant, Ben H. Paxton, is the duly elected, qualified and acting Sheriff of Kiowa County; and the defendant, Alice Cronic, is the duly elected, qualified and acting County Treasurer of said county; and that the defendant, Eunice Rich is the duly elected, qualified and acting Clerk of the District Court of said county.

II.

That said plaintiff is the owner of certain mineral reserves upon, in and under various tracts and parcels of real property located in Kiowa County, Kansas, including the Northeast Quarter (NE $\frac{1}{4}$) of Section 21, Township 29 South, Range 18 West; that there are no ad valorem taxes legally and lawfully assessed against such mineral reserves which at this time remain unpaid and delinquent.

[fol. 3]

III.

That said plaintiff is the owner of an undivided one-half ($\frac{1}{2}$) interest in and to all of the oil, gas and other minerals and mineral rights in, upon and under said Northeast Quarter (NE $\frac{1}{4}$) of Section 21, Township 29 South, Range 18 West, for a period of 20 years from and after May 25, 1943, and so long thereafter as oil or gas or other minerals are produced therefrom or so long as said premises are being developed or operated; that said mineral interest was reserved by said plaintiff in connection with the execution of a warranty deed, dated July 22, 1946, and duly recorded in the office of the Register of Deeds of Kiowa County on the 27th day of August,

1946, at 10:00 o'clock A.M. in Volume 62 of Deeds at page 530. That on or about June 3, 1955, this plaintiff executed and delivered to Gulf Oil Corporation an oil and gas lease covering its mineral interest as herein alleged, and that according to the terms and conditions of said lease, including amendments thereto, said lessee was authorized to and did create and organize, according to law and proper regulations pursuant thereto, a drilling unit including all of Section 21, Township 29 South, Range 18 West, and designated and referred to as "Section 21 Gas Unit." That according to the terms and provisions of said oil and gas lease, said lessee obligated itself to pay to this plaintiff certain cash royalties on all oil, gas or other minerals severed and removed from the tract above described or from any drilling unit of which it became a component part.

IV.

Said plaintiff further states certain gas wells have been drilled upon the drilling unit above referred to and of which the Northeast Quarter (NE $\frac{1}{4}$) of Section 21, Township 29 South, Range 18 West, is a component part, and that by reason thereof, said plaintiff is entitled to certain royalty payments under the terms and conditions of its said lease and amendments thereto; that certain taxes have [fol. 4] been erroneously and illegally assessed against certain personal property and certain undivided interests in and to the oil and gas leasehold estates and the oil and gas wells, personal property, and drilling equipment located thereon as represents this plaintiff's royalty interest in and to the oil and gas produced from its mineral reserves herein referred to or from the unit of which it forms a component part. That said assessment was made by the duly elected, qualified and acting assessor in and for said county but that said assessment is contrary to law, illegal and void in that said plaintiff was at the time of said assessment and is now wholly exempt by law from payment of any and all taxes, including Federal, State, municipal and local, except such taxes as may be lawfully levied and assessed against said plaintiff upon real estate

held, purchased, or lawfully acquired by it, as provided by Title 12 U.S.C. Sec. 931.

V.

That, pursuant to said unlawful assessment, the defendant, Alice Cronic as County Treasurer, has issued and placed in the hands of the Sheriff for collection a certain tax warrant representing the erroneous and unlawful assessment against the royalty interest of this plaintiff, a true and correct copy of which is hereto attached, identified as Exhibit 1, and by reference made a part hereof.

VI.

That, prior to the issuance of said tax warrant and on or about July 14, 1958, said defendant, Alice Cronic as County Treasurer, prepared and mailed a notice to this plaintiff of said illegal and void assessment and demanding payment of \$46.51. Said original notice is hereto attached, marked Exhibit 2, and by reference made a part hereof. That subsequent to the receipt of said notice, this plaintiff has requested the defendant, Board of County Commissioners, to abate and cancel the taxes erroneously and illegally assessed as referred to in said notice but that said defendant has failed, neglected and refused to abate and cancel said taxes. Said plaintiff further states that the defendant, Ben H. Paxton as Sheriff of said county, has threatened to and will, unless restrained and enjoined from doing so, collect the amount of said illegal assessment, together with interest and costs, and that by reason of such unlawful action, this plaintiff will suffer irreputable (sic) injury in that its lawful functions will be seriously hindered and impaired unless said defendants, and each of them, are restrained and enjoined from the commission of any further acts in connection with the collection or enforcement of said tax warrant as herein described and representing personal property taxes erroneously, illegally and unlawfully assessed as herein alleged; that said plaintiff has no complete and adequate remedy at law.

Wherefore and by reason of the foregoing, this plaintiff prays for an order, judgment and decree of this court perpetually enjoining and restraining the defendants herein, and each of them, from the commission of any further acts in connection with the collection or enforcement of the tax warrant herein described; that the defendant, the Board of County Commissioners, be ordered and directed to abate and cancel said tax warrant and all tax assessments represented thereby, and that said plaintiff has such other and further relief to which it may be entitled under the facts as herein alleged.

[fol. 6]

EXHIBIT "1" TO PETITION


(See Opposite) 

EXHIBIT "1" TO PETITION

Assessed in Ursula Twp.

SD No. 1 RHS NO. G Cem. Dist. No. F

Tang. Val. \$1190 Intang. Val. \$

Tangible Tax (Full Amount) 43.58

Intangible Tax (Full Amount)

Dog Tax (Full Amount)

Grain Tax (Full Amount)

Total Tax (Full Amount) 43.58

Tangible Tax (2nd half)

Intangible Tax (2nd half)

Dog Tax (2nd half)

Grain Tax (2nd half)

Treasurer's Warrant Fee 20

Amount of Warrant 43.78

10% Interest on Warrant From

Dec 20th or June 20, 19

Sheriff's Fee

Commission and Mileage

Total Amount to be Collected

PERSONAL PROPERTY TAX WARRANT
State of Kansas, Kiowa County, SS. No. 896

Office of County Treasurer, Greensburg, Kansas

To the Sheriff of Said County, Greeting:

YOU ARE HEREBY COMMANDED under and by virtue of Chapter 455 Session Laws of Kansas, 1947, to levy of the goods, chattels and tenements

of Federal Land Bank

whose address is Wichita, Kansas

the sum of

plus interest at 10% per annum and costs thereon, from All 19

(Dec. 20th if full year, June 20th if last half

to date of payment, being the amount of 19

(All or 2nd Half)

Personal Property tax assessed for all purposes, which is delinquent and unpaid. You will add your costs for collection and make due return of this warrant to my office on or before October 1, 1958.

Given under my

hand this date 8-15-58

(ORIGINAL)

/s/ Alice Cronie
County Treasurer

[fol. 7]

EXHIBIT "2" TO PETITION

Oil and Gas Properties and Production.

TREASURER'S OFFICE, KIOWA COUNTY

Notice—Delinquent Personal Property Tax

Greensburg, Kansas, July 14, 1958

The records in this office show that your Personal Property Tax for
 the year of 1957, assessed in Urusla ^{Twp.} City, is unpaid. The total
 amount due plus interest to August 15 is \$ 46.51.

Unless paid by August 15, I am compelled by law (Sec. 2, Ch. 360, Session Laws 1945) to issue a Personal Property Tax Warrant to the County Sheriff and such Warrant shall be recorded as a judgment against you in the District Court. Pay now and avoid additional costs.

Please return this statement when you Remit.

Alice Cronic
 Kiowa Co. Treas.

Page 140 Line 33.

Roberts, Hutchinson, Kansas

SW 21-29-18

RECEIVED

JUL 15 1958

FEDERAL LAND BANK

[fol. 8]

ANSWER—Filed November 13, 1958

Now comes the defendants, and each of them, and for answer to plaintiff's petition denies each and every allegation of fact in the petition contained.

Wherefore, defendants demands judgment that plaintiff take naught by its suit and that defendants have and recover their costs herein.

PETITION FOR LEAVE TO INTERVENE—Filed February 28, 1959

Comes now the State of Kansas, by and through its attorney general, John Anderson, Jr., and respectfully petitions the court for an order allowing the State of Kansas to intervene and be made a party defendant in the above entitled cause and, in support thereof, shows to the court:

That the above entitled action is an injunction to restrain the collection of personal property taxes on mineral royalty interests levied under a state statute and against the plaintiff, the Federal Land Bank of Wichita, in Kiowa County, Kansas.

That the plaintiff each year derives similar mineral royalties from substantial property interests located not only in Kiowa County but in other counties through the state.

The rights and interests of the citizens of the State of Kansas as manifested by their state personal property tax statutes here involved will be materially affected by the outcome of this proceeding, and the matter is one of general state wide interest and concern.

[fol. 9] Wherefore, the State of Kansas prays the court for an order allowing it to intervene and be made a party defendant herein and to file its answer herein.

ORDER AUTHORIZING INTERVENTION—March 4, 1959

Comes now to be heard the Petition for leave to intervene filed herein by the State of Kansas, by and through its Attorney General, John Anderson, Jr. Upon due consideration of this matter, the court finds that, and hereby orders that the State of Kansas may intervene herein and is hereby made a party defendant with leave to file an answer herein within 10 days.

ANSWER OF THE STATE OF KANSAS—Filed March 13, 1959

Comes Now the State of Kansas, intervener and defendant herein, by and through its Attorney General, John Anderson, Jr., and for its answer to plaintiff's

petition in the above entitled cause, denies each and every allegation therein except as hereinafter admitted.

I.

That defendant admits the allegations of paragraph I and admits that plaintiff is the owner of real property in Kiowa County, Kansas, and specifically, a determinable fee interest in an undivided one-half of the mineral estate in the Northeast one-fourth (NE¼) of Section 21, Township 29 South, Range 18 West.

[fol. 10]

II.

The defendant admits the allegations of paragraph III and admits that plaintiff is entitled to certain royalty payments as alleged in paragraph IV; admits that personal property taxes for 1957 have been assessed against the royalty interest of the plaintiff, pursuant to G.S. 1949, 79-329 to 334 inclusive, and that a tax warrant for \$46.51 unpaid taxes and accrued interest has been issued by the county treasurer, all as alleged in paragraphs V and VI, but the defendant denies all argumentative matter and conclusions of law contained in these paragraphs.

III.

Further answering, the defendant shows to the Court that the plaintiff's power is strictly circumscribed by the federal statutes under which it was created and exists (Title 12, United States Code, Sec. 641 through Sec. 1012); that the primary function of the plaintiff is to provide a rural credit system by which credit should be extended to persons employed in agriculture (*Federal Land Bank v. Gaines*, 290 U.S. 247); that the plaintiff has no power, either express or implied, to enter upon and continue original, speculative enterprises, and particularly, the plaintiff does not have power to hold real property interests over protracted periods of time for the purpose of speculating in future profits, rents or royalties that might be obtained from mineral production thereon.

IV.

The defendant further shows to the Court that the plaintiff reserved ownership of a one-half interest in the aforementioned mineral estate when it conveyed the surface estate in 1946; that such reservation and retention of the mineral estate was for the purpose of speculating in future profits, rents or royalties that might be obtained from mineral production thereon; that plaintiff has retained ownership of this mineral estate continuously since [fol. 11] 1946; that plaintiff gave an oil and gas lease to such minerals in 1955; that the royalties here sought to be taxed as personal property are derived solely from and incident to plaintiff's ownership and leasing of this mineral estate; and that, by virtue of such actions, the plaintiff has entered upon and continued over a protracted period of time an original, speculative enterprise unrelated to its primary function. The aforesaid activities of the plaintiff are in excess of the powers granted it by the federal statutes under which it was created and exists, and the ownership of property used solely in furtherance of such activities is likewise in excess of plaintiff's statutory powers.

V.

In enacting Title 12, United States Code, Sec. 931, Congress did not intend to, nor did it, exempt from taxation personal property acquired or held by a federal land bank in excess of its statutory powers, nor is such personal property impliedly exempted from taxation by the federal constitution. Therefore, the plaintiff's royalty interest here involved is not exempt from personal property taxation either by Title 12, U.S.C., Sec. 931, or by the federal constitution.

VI.

As a separate defense to this action, and independent of the allegations in paragraph III, IV and V above, the defendant further answers and shows to the Court that the plaintiff has held title and possession to the real estate here involved (to wit, an undivided one-half in-

terest in the mineral estate of the above described quarter section) for a period in excess of 15 years; that such real estate was purchased or acquired to secure a debt due plaintiff; that Title 12, United States Code, Sec. 781, Fourth (b), prohibits plaintiff from holding title and possession to real estate purchased or acquired to secure a debt due it for a period longer than five years, except with the special written approval of the Farm Credit Administration; that plaintiff relies on a written regulation of the Farm Credit Administration (See Exhibit "A", attached hereto) for approval of its holding this property beyond 5 years; that this written regulation grants no special approval as contemplated by the federal statute; that this regulation illegally purports to delegate to the plaintiff the administrative discretion of the Farm Credit Administration and, in effect, authorizes plaintiff to approve its own actions in holding title and possession to real estate beyond 5 years; and such written regulation is, for these reasons, wholly void and of no effect.

VII.

Plaintiff's action in holding this real estate for a period longer than five years is in violation of this federal statute (Title 12, United States Code, Sec. 781, Fourth (b)); plaintiff's royalty interest here sought to be taxed by the State of Kansas is derived from and incident to plaintiff's continuing illegal ownership of this real estate; and the ownership of such royalty interest is, therefore, beyond the statutory power of the plaintiff.

VIII.

Congress did not intend to, nor did it, exempt from taxation personal property acquired or held by plaintiff where the acquisition or holding is beyond and in violation of its statutory power. Therefore, plaintiff's royalty interest here involved is not exempt from personal property taxation either by Title 12, U.S.C. Sec. 931, nor is such property impliedly exempted from taxation by the federal constitution.

Wherefore, defendant prays that the plaintiff take nothing herein, and for judgment in favor of the defendant and against the plaintiff, and for the costs of this action.

[fol. 13] The original defendants on March 31, 1959 filed an answer which is not abstracted since it is identical with that of the intervenor.

Appellant filed a reply to the answer of intervenor which by agreement of counsel on the date of trial was also considered as a reply to the amended answer of the original defendants.

The reply filed by the appellant to the answer of the intervenor, and which by agreement is also considered as a reply to the amended answer filed by the original defendants, reads:

REPLY OF THE PLAINTIFF TO THE ANSWER OF STATE OF KANSAS

Comes now the plaintiff and for its reply to the answer filed herein by the intervenor, the State of Kansas, alleges and denies as follows:

I.

Said plaintiff denies generally each and every material allegation, matter, statement and thing contained in said answer which is inconsistent or in any wise controverts or denies any allegation, matter, statement or thing contained in said plaintiff's petition.

II.

Said plaintiff for further reply specifically denies that it is holding minerals illegally in and under the real property described and referred to in said answer or in and under or in connection with any other real property located in the County of Kiowa, State of Kansas, but said plaintiff alleges the facts to be that it is holding said minerals and mineral reserves strictly in accordance with the laws under which it was created and lawful rules and regulations authorized thereby and promulgated in pursuance thereto.

[fol. 14]

III.

Said plaintiff further specifically denies the right, authority, or privilege of said intervener to challenge the acts of this plaintiff as ultra vires but alleges that such right, authority or privilege may only be exercised by the supreme sovereign under which said plaintiff was organized and is existing.

Wherefore, said plaintiff prays for an order, judgment and decree in accordance with the prayer of its original petition.

PLAINTIFF'S EVIDENCE

On March 31, 1959, the case was regularly called for trial, and all parties announced themselves as being ready. After the opening statement by counsel for plaintiff, counsel for intervener made his opening statement, a portion of which reads:

"... the Bank is a governmental instrumentality created by federal statute, and the only powers it has are the powers delegated to it by these federal statutes, either express or implied; that any activity or enterprise it undertakes which is not expressed or implied by its delegated powers is beyond those powers; that Congress in exempting the Federal Land Bank from personal property taxes intended that that exemption extend only so far as the Bank's activities were in furtherance of their statutory power; *that the minute they stepped beyond the extent of their statutory power their tax immunity ceased;*" (Italics Ours)

Preliminary to the introduction of evidence on behalf of the plaintiff, the following stipulation was entered into by counsel for the respective parties:

[fol. 15] "Mr. Jamison: I want to make one thing clear: This action does not involve real property taxes. There is no contention here on the plaintiff's part that it is in any manner exempt from the payment of

real property taxes, and this action has to do only with the assessment and collection of personal property tax. Now isn't that correct, Mr. Londerholm?

"Mr. Londerholm: This involves a personal property tax; that's correct."

Plaintiff then offered Exhibits Nos. 1, 2, 3, and 4 from the case of Federal Land Bank of Wichita vs. George Noland, et al., Case No. 4444, and which exhibits are hereafter identified and abstracted. Plaintiff also offered as evidence Exhibit No. 5 which is also hereinafter abstracted. Title 12 United States Code, Section 701, 1138(c) Section 931, and Section 781(a) and (b), and Section 665, also Title 6 Section 10.64 1956 Revised Code of Federal Regulations are also offered in evidence. The tax warrant attached to the petition was also identified as a correct copy of the original and offered in evidence. All of the exhibits referred to were admitted without objection.

DEFENDANT'S EVIDENCE

Counsel for the intervener on its behalf and on behalf of the defendants offered in evidence Exhibits Nos. 1, 2, 3 and 4 from the files in the Federal Land Bank of Wichita vs. George Noland, No. 4444, which are hereinafter identified and abstracted. Counsel for intervener also offered in evidence Exhibit A attached to its answer, all of which [fol. 16] was excluded on objection by plaintiff's counsel except Title 6, C.F.R. Section 10.64 Rev. 1956.

H. A. Beverlin was called as a witness on behalf of the defense, and testified in substance, as follows: That he is an oil proration analyst for the Conservation Division of the State Corporation Commission; that as such he is required to keep certain information in connection with oil and gas production in the State. The records kept are of a public nature and contain information regarding production of oil and gas on the NE $\frac{1}{4}$ Section 21-29S-18W, Kiowa County, which is part of the Pardoe Unit. Counsel for the intervener then offered in evidence Exhibits Nos. 5, 6 and 7, which are, respectively, application, order, and plat of acreage attributable to a gas well. The exhibits

were offered for the purpose of showing that the appellant has no express or implied power to enter upon a speculative enterprise unrelated to its primary function. These exhibits were admitted over appellant's objection. Defendant's Exhibit 8, which appears to be an order by the Conservation Division describing the boundaries of the field which include the tract in question, was offered and admitted over the following objection interposed by counsel for the appellant.

"Mr. Jamison: The plaintiff objects to the instrument as immaterial, irrelevant, not tending to prove or disprove any of the material issues of the case, and only a confusion of the record. If the Court please, we might say here that this will get off onto a cold trail and never will get back.

[fol. 17] "It is admitted by both parties that this Northeast Quarter of 21 is a portion of the drilling unit and that there has been production of oil, gas or hydrocarbons from that drilling unit, and that the Federal Land Bank has participated in its prorata interest in that production, and that production has been taxed as personal property.

"What I can't understand is what other and additional purpose do these instruments and all this material from the Conservation Division serve. I don't see that they serve anything except just to confuse the record and to make it more voluminous.

"If there is any reason why this material should be in evidence I'd like to have it all in there. But I don't see how it could assist the Court or assist anybody in arriving at the issue in this case. I don't understand counsel for the State."

Counsel for the State also offered Exhibits 9A through 9F, which purport to be a copy of the minutes of the Kansas Nomenclature Committee, and which contain the naming of the discovery well and the date of the Nichols Field. They were admitted over appellant's objection. The minutes show that the discovery well was completed on March 2, 1955 as a producing well and that gas was produced and marketed sometime subsequent thereto.

Paul Buser was called as a defense witness and testified in substance as follows: That he is employed by the Federal Land Bank in charge of the mineral and real estate department; that the records in his possession show all income from the tract in question but do not reveal the internal expense incidental thereto.

[fol. 18] Defendant's Exhibit No. 10 shows all bonuses and rentals received by the appellant in connection with mineral leases which it executed covering the tract in question. Concerning the content of this exhibit, counsel for the State asked the following question to which the appellant objected in the following language:

"Q. Then pursuant to that lease, what is the amount that was received in the way of cash bonus?

"Mr. Jamison: We object to that question as calling for testimony that is incompetent, irrelevant, and immaterial, and not tending to prove or disprove any material issue in the case, since the income we have had from the property is in no way related to whether or not the Federal Land Bank, an instrumentality of the U. S. Government, is required to pay a personal property tax."

"Mr. Jamison: If the Court please, I don't see any relevancy to what our income was on a specific piece of property, how much we gained or how much we lost in that transaction, as having a bearing on our liability to pay a personal property tax. There is no relevancy or connection at all to it. If the Court lets this in they can go into the entire operation of the Federal Land Bank in this county, or we can as rebuttal, and ascertain how much we have gained or how much we have lost in salvage propositions on every piece of property in this county. Now, I anticipated what that would lead up to, and that is the reason that I objected to it. Now, this case is for an injunction against the county collecting tax on personal property owned by the Federal Land Bank, and it has nothing to do with the property to be sold, how much we got, or how much we lost.

"Now, I am at this time making a further objection to this testimony for the reason that the only person [fol. 19] who can challenge the rights of the Federal Land Bank ultra vires, or in excess of their powers, is the sovereign under which they received their charter, to-wit, the U. S. Government. They admit in their pleadings we received the charter; we are organized and existing under federal statute, and the law is clear that only the sovereign can challenge an ultra vires act, in excess of their corporate powers.

"I make the further objection at this time to the introduction of this evidence for the reason that any challenge that can be made by any sovereign or any other individual as to the act being ultra vires, or in excess of their corporate powers, must be made in a direct proceeding and not in a collateral attack, and this is a collateral proceeding."

Defendant's Exhibits 10, 10A and 10B which show income from the unit in question as cash bonus and rentals in the sum of \$960.00 and royalty receipts of \$2,017.20 from the sale of oil and gas were offered in evidence and admitted over appellant's objection.

The entire testimony of the witness was then admitted over appellant's objection as to irrelevancy or immateriality. The exhibits do not include internal expense of the bank or attorney's fees in connection with the handling of the foreclosure and sale of the unit. No breakdown can be made of the internal expense as applied to the particular tract.

The defense next called Richard Janson, who testified in substance, as follows: That he is the owner of the surface and an undivided one-half of the mineral rights in connection with the NE $\frac{1}{4}$ Section 21-29-18; that he [fol. 20] bought it from the Federal Land Bank, and paid \$3,500.00 therefor. Objections were sustained to further questions of the witness with reference to the dates when payments were made, the payment of taxes, and date witness acquired possession.

Counsel for the defense then offered to prove by the witness that he tried to purchase the mineral interest

from the appellant, the price offered, the amount of taxes he paid on the land, and the interest rate on his contract. This proffer was rejected by the court on objection interposed by counsel for the appellant.

The defense next offered to prove by Harold Herd, an attorney, that he had made several attempts to purchase the mineral interest in question from the appellant on behalf of Richard Janson, the price offered, and his success in purchasing the interest. The court sustained appellant's objection to this offer.

The witness, Richard Janson, was recalled to the stand and identified defendant's Exhibit 11 as deed from the Federal Land Bank to himself which was then offered and admitted in evidence.

The case was taken under advisement of the court and briefs submitted at the court's request. Defendants then requested that the court make separate findings of fact and legal conclusions. The requested findings and conclusions are not abstracted separately since they are substantially similar to those made by the court, except conclusion No. 9 which was added.

[fol. 21] The appellant then requested the following findings of fact and conclusions of law:

PLAINTIFF'S SUGGESTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. The plaintiff, The Federal Land Bank of Wichita, is a corporation duly organized and existing under and by virtue of Federal Statutes.

2. Plaintiff is an instrumentality of the Federal Government and entitled to tax immunities incidental thereto.

3. Plaintiff acquired the NE $\frac{1}{4}$ of Section 21, Township 29 South, Range 18 West, Kiowa County, Kansas, pursuant to 12 U.S.C. 781, through foreclosure of a real estate mortgage executed in its favor by the then owners of said land to secure a loan of money made to said owners and which was delinquent at the time said foreclosure action was commenced.

4. On or about August 8, 1946, said plaintiff conveyed said land but excepted from said conveyance an undivided one-half interest in and to all the oil, gas and other minerals therein for a period of 20 years from and after May 25, 1943, and so long thereafter as oil, gas or other minerals were produced or the premises were being developed or operated.

5. The defendant, County of Kiowa, assessed certain personal property taxes against the interest of the plaintiff in an oil and gas well and on oil and gas produced from a drilling unit of which plaintiff's mineral reserve became a component part; said taxes were assessed for the year 1957, pursuant to G.S. 1949, 79-329 to 334.

6. This action was filed for the purpose of enjoining the collection of the tax so levied and assessed for the reason that the same is illegal, unconstitutional and void.

[fol. 22]

Conclusions of Law

1. The plaintiff as an instrumentality of the Federal Government may not be taxed by any state or political subdivision thereof except as specifically permitted by Federal statutes.

2. The plaintiff, under 12 U.S.C. 931, is specifically exempt from state, municipal, and local taxation, except as to taxes on real estate held, purchased, or taken under the provisions of 12 U.S.C. 781.

3. No Federal statute has been enacted permitting the assessment by any taxing body of personal property taxes against the plaintiff.

4. The defendants may not challenge as ultra vires or in excess of its corporate powers acts of the plaintiff with respect to its mineral reserve herein involved.

5. Construction of the applicable Federal statutes with respect to the acquisition, disposition and taxing of property owned by the plaintiff is binding on this court.

6. Plaintiff is entitled to an injunction against the defendants, and each of them, as prayed for in its petition.

The court on July 10, 1959, prepared its findings and conclusions which are attached to and made part of the journal entry of judgment, except finding No. 8 which was added.

Appellant on July 17, 1959 filed a motion to vacate certain conclusions of law and to make additional findings of fact and legal conclusions, which reads:

[fol. 23]

MOTION OF PLAINTIFF TO VACATE CERTAIN CONCLUSIONS OF LAW AND TO MAKE ADDITIONAL FINDINGS OF FACT AND LEGAL CONCLUSIONS

Comes now the plaintiff in the above entitled case and moves the court for an order vacating, setting aside, and holding for naught certain conclusions of law heretofore made herein on July 10, 1959 and numbered 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 for the following reasons, to-wit:

1. That said conclusions are not supported by evidence produced at the trial of said cause.
2. That said conclusions are not supported by the findings of fact heretofore made herein.
3. That said conclusions are contrary to law and not supported by decisions or statutes.

Said plaintiff further requests that the court make additional findings of fact and conclusions of law as follows:

Findings of Fact

1. Plaintiff is an instrumentality of the Federal Government and is entitled to tax immunity incidental thereto.
2. That said immunity from taxation has not been waived by the Federal Government by any statute, regulation or decision as to taxes against plaintiff's personal property.
3. That the defendant, County of Kiowa, by and through its various agencies levied and assessed certain personal property taxes against the interests of the plaintiff in an

oil and gas well and on oil and gas produced from a drilling unit of which plaintiff's mineral reserve became a component part; said taxes were assessed for the year 1957, pursuant to G.S. 1949, 79-329 to 334.

[fol. 24]

Conclusions of Law

1. The plaintiff, as an instrumentality of the Federal Government, may not be taxed by any state or political subdivision thereof unless its immunity therefrom has been specifically waived.

2. The plaintiff under 12 U.S.C. 931 is specifically exempt from state, municipal and local taxation, except as to taxes on real estate held, purchased or taken under the provisions of 12 U.S.C. 781.

3. No permission has been granted by the Federal Government by statute or regulation authorizing any state or political subdivision thereof to levy or assess personal property taxes against the plaintiff.

4. Defendants in this action may not challenge as ultra vires or in excess of its corporate powers acts of the plaintiff with respect to its mineral reserves herein involved.

5. Construction of the applicable Federal statutes with respect to acquisition, disposition and taxing of property owned by a Federal instrumentality is binding on this court.

6. Plaintiff is entitled to an injunction against the defendants, and each of them, as prayed for in its petition.

This motion was presented on October 7, 1959 and overruled by the court except paragraph 3 which was included in the court's findings as No. 8.

Thereafter and on the same day appellant filed its motion for a new trial, which by agreement of counsel was argued on the same day without prior service of copies on adverse counsel. The motion reads:

[fol. 25]

PLAINTIFF'S MOTION FOR NEW TRIAL AND OVERRULING
THEREOF

Comes now the plaintiff in the above entitled case and moves the court for a new trial in said cause upon the following specified grounds:

1. Abuse of discretion of the trial court.
2. Erroneous rulings of the court.
3. The decision and judgment was rendered under the influence of passion or prejudice.
4. That the judgment and decision is wholly contrary to the evidence.
5. That the judgment and decision is wholly contrary to the law as applicable to the evidence.
6. That the court's findings of fact do not support the legal conclusions and judgment rendered herein.

Wherefore, said plaintiff prays that the decision and judgment heretofore rendered herein be vacated, set aside, and held for naught, and that it be granted a new trial in said cause.

The motion for a new trial was overruled by the court and judgment entered as of October 7, 1959.

JOURNAL ENTRY OF JUDGMENT—Entered October 7, 1959

Now on this 31st day of March, 1959, this cause comes on for trial. Plaintiff appears by and through its attorneys, Edward H. Jamison of Wichita, Kansas, and Steve W. Church of Greensburg, Kansas. The defendants, the Board of County Commissioners of the County of Kiowa; Ben H. Paxton, Sheriff; Alice Cronin, County Treasurer; and Eunice Rich, Clerk of the District Court, appear by and through their attorney Martin A. Aelmore, County [fol. 26] Attorney of Kiowa County. The defendant and intervener, the State of Kansas, appears by and through its attorneys, A. K. Stavely and Robert C. Londerholm, Assistant Attorneys General of the State of Kansas, of Topeka, Kansas.

Thereupon, trial is had to the Court, the Honorable Ernest M. Vieux sitting.

Thereupon, the plaintiff introduces its evidence and rests and defendants introduce their evidence and rest. The arguments of counsel being fully heard, the Court requests the submission by the parties of briefs and suggested findings of fact and conclusions of law.

Thereupon, and on the 10th day of July, 1959, the parties previously having submitted their briefs and suggested findings of fact and conclusions of law, the Court submits to the parties its findings of fact and conclusions of law.

Thereafter, on the 7th day of October, 1959, the parties heretofore mentioned present as before, plaintiff's motion to vacate certain of the Court's conclusions of law and to make additional findings of fact and legal conclusions is presented to the Court, and after hearing the arguments of counsel, the Court overrules this motion with the exception of paragraph 3 of the findings of fact requested in plaintiff's motion, which paragraph is ordered by the Court to be added to the Court's findings of fact as paragraph 8 thereof. The Court's findings of fact, as thus amended, and the Court's conclusions of law are thereupon entered in this cause as follows:

FINDINGS OF FACT

1. The Federal Land Bank of Wichita, plaintiff herein, is a corporation duly authorized and organized under an Act of Congress.

2. In 1922 plaintiff made a mortgage loan of \$3000 upon the land involved in this case, being the Northeast quarter of Section 21, Township 29, Range 18 in Kiowa County, Kansas. Said loan being in default in 1941 plaintiff commenced an action to foreclose said mortgage in the District Court of said County, being Case No. 4444 in said Court.

3. Thereafter on October 10, 1941, judgment was rendered in said action in favor of said bank and against the defendant owners of the sum of \$3,306.79 with interest at

six percent, and for foreclosure of said mortgage and costs of suit. In due time an order of sale was issued and on November 24, 1941, plaintiff bid in said land at Sheriff's sale for the sum of \$3,234.37, being the amount of the judgment, interest and costs, less a credit of \$150.00 by cancellation of the stock issued in connection with said loan. Said sale was duly confirmed, and on May 25, 1943, plaintiff received a Sheriff's deed for said premises. During the running of the period of redemption, plaintiff paid no taxes or insurance on said property.

4. On January 1, 1943, the Farm Credit Administration promulgated the following regulation:

"Holding mineral rights for more than 5 years. In cases where, in connection with a sale of bank-owned real estate,

"the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both 'title and possession' of real estate within the meaning of section 13 (Fourth (b)) of the Federal Farm Loan Act (12 U.S.C. 781 (4) (b)). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the bank's opinion it is in the bank's interest, to do so, has the approval of the Administration." (Code of Federal Regulations, Title 6, Par. 10, 64.)

[fol. 28] On June 16, 1941, the plaintiff's Board of Directors had passed the following resolution:

"Whereas, this Board has heretofore ratified and confirmed reservations by The Federal Land Bank of Wichita of minerals or mineral rights in connection with sales of its acquired real estate; and

"Whereas, this Board feels that ordinarily it is to the best interests of the Bank to reserve an interest in minerals or mineral rights in connection with sales of its acquired real estate in order to realize as much as possible from such sales, and so retain

such minerals or mineral rights for such periods of time as it is deemed to be for the Bank's best interests,

"Now, Therefore, be it resolved that the Executive Committee of this Bank is hereby authorized and directed to reserve such interest in the minerals or mineral rights lying in, upon or under real estate sold by it as in the opinion of such Committee is deemed to be to the best interests of the Bank so to do, and to retain such minerals and mineral rights for such periods as may be permissible under the Farm Loan Act as amended, and the rules and regulations promulgated thereunder, and as in the opinion of such Committee are in the Bank's best interests."

5. In September, 1942, Richard P. Janson contracted to buy the land for \$3,500 and he and his wife subsequently took title to the land by a special corporation warranty deed dated August 8, 1946, reciting a consideration of \$3,500 wherein the Federal Land Bank reserved an undivided one-half interest in the mineral estate for a period of twenty years from and after May, 1943, and so long thereafter as minerals are produced on the premises or being developed or operated. In 1946, when plaintiff conveyed to Janson and reserved the one-half interest in the mineral estate, it had recouped its loss suffered by reason of the foreclosure of its mortgage on the real estate.

[fol. 29] 6. At the time plaintiff reserved the one-half mineral interest in the land there was no mineral production or immediate prospect thereof from the premises or from lands in the vicinity. The land is now unitised for oil and gas production purposes with the Northwest Quarter of Section 21, wherein lies the Pardoe gas well, the source of the gas and oil from which plaintiff's royalty interest is derived. The Pardoe well draws from the Nichols—Mississippian zone pool of gas which was first discovered in 1955.

7. On November 9, 1944, the plaintiff gave a ten year oil and gas lease to the property to V. C. Rouse. On June 3, 1955, the plaintiff granted the Gulf Oil Corporation a second oil and gas lease to the property. At the time of trial of the present case, plaintiff had derived \$960.00 in rents and bonuses from these two leases and, in addition, \$2,017.20 in royalties under the second lease. From 1947 through 1958, inclusive, plaintiff has paid a total of \$33.15 in real property taxes upon its interest in the mineral estate.

8. That the defendant, County of Kiowa, by and through its various agencies levied and assessed certain personal property taxes against the interests of the plaintiff in an oil and gas well and on oil and gas produced from a drilling unit of which plaintiff's mineral reserve became a component part; said taxes were assessed for the year 1957, pursuant to G.S. 1949, 79-329 to 334.

CONCLUSIONS OF LAW

1. The Federal Land Bank of Wichita has only those powers granted it by the federal statutes under which it was created.

2. The Federal Land Bank of Wichita has no power, under the Federal Statutes, to speculate or make profits out of land taken by foreclosure.

[fol. 30] 3. The Federal Land Bank has no power, under Federal Statutes, to retain title to foreclosed real estate after such time as it has fully recouped its loss sustained by reason of the foreclosed mortgage transaction, and the retention of title in such circumstances is beyond the legal authority of the Bank.

4. The Federal Land Bank of Wichita holds title and possession of real property within the meaning of Title 12, United States Code, Par. 781(b), by virtue of its ownership of the mineral estate in Kiowa County.

5. The Farm Credit Administration has not lawfully granted the Federal Land Bank the special approval re-

quired by Title 12, United States Code, Par. 781 Fourth (b) for the Bank to hold title and possession of real property for a longer period than five years.

6. Congress, in enacting Title 12, United States Code, Par. 931, did not exempt from taxation property held by a federal land bank (1) in excess of its delegated powers, or (2) property held by the land bank in direct contravention of the time limitation imposed by Congress in Title 12, United States Code, Par. 781 Fourth (b).

7. The defendants in this case are entitled to raise the question of whether the Bank has exceeded or is in violation of its delegated powers as a defense to this action where the plaintiff attempts to avoid payment of taxes arising from property held without legal authority.

8. The Court will not lend its aid in the enforcement of a claim of exemption founded on illegality.

9. The holding of the property herein involved by plaintiff is not in exercise of a governmental function but is of the nature of a speculative investment after the governmental function with respect to the original mortgage investment has been accomplished.

10. Judgment should be entered in this case for defendants, with costs.

[fol. 31] 11. The injunction prayed for by the plaintiff is denied.

Plaintiff then presents its motion for a new trial and after hearing the arguments of counsel thereon, the motion is overruled and Court is adjourned.

It Is Therefore by the Court Considered, Ordered, Adjudged and Decreed, That the injunction prayed for by plaintiff is denied, that the plaintiff take nothing by this action and that the defendants recover their costs herein expended.

Ernest M. Vieux, Judge.

IN THE DISTRICT COURT OF KIOWA COUNTY, KANSAS
THE FEDERAL LAND BANK OF WICHITA,
Wichita, Kansas, a corporation, Plaintiff,

vs.

Supreme Court Case No. 42842
District Court Case No. 4895

BOARD OF COUNTY-COMMISSIONERS OF THE COUNTY OF
KIOWA, STATE OF KANSAS; BEN H. PAXTON, Sheriff;
ALICE CRONIC, County Treasurer; and EUNICE RICH,
Clerk of the District Court, Defendants,
THE STATE OF KANSAS, Intervener.

[fol. 32]

NOTICE OF APPEAL—Filed October 29, 1959

To: Board of County Commissioners of the County of
Kiowa, State of Kansas; Ben H. Paxton, Sheriff;
Alice Cronic, County Treasurer; and Eunice Rich,
Clerk of the District Court;

The State of Kansas, Intervener; and their Attor-
neys of record.

You and each of you are hereby notified that the plain-
tiff, The Federal Land Bank of Wichita, Wichita, Kansas,
a corporation, hereby appeals to the Supreme Court of
the State of Kansas from each and every order, judg-
ment and decree of the District Court of Kiowa County,
Kansas, made and entered herein and particularly but
without limitation from

1. The conclusions of law and each of them as found by
said court.
2. The court's order overruling plaintiff's motion to
vacate legal conclusions and to make additional findings
of fact and legal conclusions.
3. The court's order and judgment rendered herein on
October 7, 1959, denying the injunction against the de-
fendants as prayed for by the plaintiff.
4. The court's order overruling said plaintiff's motion
for a new trial.

All of which you will take due notice.

Dated this 13th day of October, 1959.

Steve W. Church, Greensburg, Kansas, Wm. G. Plested, Jr., Edw. H. Jamison, by Edw. H. Jamison, Wichita, Kansas, Attorneys for Plaintiff.

[fol. 33] Acknowledgments of service (omitted in printing).

Affidavits of service (omitted in printing).

[fol. 35]

Plaintiff's Exhibits

EXHIBIT No. 1.

Exhibit No. 1 is Petition in Case No. 444 in the District Court of Kiowa County, and in which the Federal Land Bank, as plaintiff, seeks foreclosure of its mortgage covering the NE $\frac{1}{4}$ Section 21-29S-18W. George Noland, et al, are named as defendants.

EXHIBIT NO. 2.

Exhibit No. 2 is journal entry of judgment in the action identified in Exhibit No. 1 entered on October 10, 1941 for the sum of \$3,306.79, and for the foreclosure of plaintiff's mortgage against the tract securing it.

EXHIBIT No. 3.

Exhibit No. 3 is order of sale and sheriff's return showing sale of tract identified in Exhibit No. 1 to the Federal Land Bank on November 24, 1941 for \$3,234.37.

[fol. 36]

EXHIBIT No. 4.

Exhibit No. 4 is a certified copy of sheriff's deed in favor of the Federal Land Bank dated May 25, 1943 and recorded in Book 60 at Page 413, and conveying the tract described in Exhibit No. 1.

EXHIBIT No. 5.

Exhibit No. 5 is certified copy of resolution approved by the Board of Directors of the Federal Land Bank

authorizing it to retain mineral reserves for such periods as may be permissible under the Farm Loan Act as amended, and the rules and regulations promulgated thereunder. The complete resolution is set out in the journal entry of judgment.

Defendant's Exhibits

EXHIBIT No. 1.

Exhibit No. 1 is mortgage dated August 4, 1922 in the sum of \$3,000.00 secured by the NE $\frac{1}{4}$ Section 21-29S-18W, Kiowa County, Kansas, and executed by George Noland and wife in favor of the Federal Land Bank.

EXHIBIT No. 2.

Exhibit No. 2 is partial satisfaction of judgment entered in the foreclosure action herein identified as Case No. 4444. The judgment was credited by that instrument in the sum of \$150.00, which was par value of the stock issued in connection with the mortgage.

[fol. 37]

EXHIBIT No. 3.

Exhibit No. 3 is approval of Sheriff's sale of property in the action identified in Exhibit No. 2. The sale was made to the Federal Land Bank and approved on December 9, 1941.

EXHIBIT No. 4.

Exhibit No. 4 is a certificate of purchase executed by the sheriff to the Federal Land Bank in the case identified herein as No. 4444, and covering real property described in Exhibit No. 1.

EXHIBITS Nos. 10, 10A and 10B.

Exhibits Nos. 10, 10A and 10B are copies of the record from the Federal Land Bank showing receipt by it of \$960.00 as bonus and rentals from leases on the mineral interest reserved by it in connection with the real property in question. These Exhibits also show receipt by

the Federal Land Bank of \$2,017.20 as royalties paid in connection with such leases.

EXHIBIT No. 11.

Exhibit No. 11 is certified copy of deed from the Federal Land Bank to Richard P. and Beulah E. Janson recorded in Book 62 at Page 530, dated August 8, 1946, and conveying the NE $\frac{1}{4}$ Section 21-29S-18W for the sum of \$3,500.00. The deed reserves in grantor one-half of the oil, gas and other minerals for a period of twenty years from May 23, 1943, and as long thereafter as oil, gas, or other minerals are produced therefrom.

[fol. 38]

CERTIFICATE.

We, the undersigned attorneys for the appellant, certify the foregoing to be a true and correct abstract of the record in the above entitled case.

Steve W. Church, Greensburg, Kansas, Wm. G. Plested, Jr., Edw. H. Jamison, Wichita, Kansas,
Attorneys for Appellant.

SPECIFICATION OF ERRORS.

The trial court erred:

I.

In admitting incompetent evidence offered on behalf of the defendants over the objection of plaintiff.

II.

In making conclusions of law which are not warranted nor supported by the evidence nor the findings of fact.

III.

In failing and refusing to make findings of fact supported by competent evidence and legal conclusions supported by such findings as requested by plaintiff.

IV.

In overruling plaintiff's motion to vacate certain erroneous conclusions of law and in failing and refusing to make additional findings of fact supported by the evidence and additional legal conclusions based thereon;

[fol. 39]

V.

In overruling plaintiff's motion for a new trial.

VI.

In entering judgment for the defendants and against the plaintiff denying it the injunction prayed for in its petition.

[fol. 40]

[File endorsement omitted]

[fol. 41]

IN THE SUPREME COURT
OF THE STATE OF KANSAS

THE FEDERAL LAND BANK OF WICHITA, a Corporation of
Wichita, Kansas, Appellant,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA,
STATE OF KANSAS; BEN H. PAXTON, Sheriff; ALICE
CRONIC, County Treasurer; and EUNICE RICH, Clerk of
the District Court; THE STATE OF KANSAS, Intervener,
Appellees.

No. 41,842

Appellees' Counter Abstract—Filed February 10, 1960

The following is testimony of appellees' witnesses and an extract from the argument on the motion for a new trial.

H. A. Beverlin Testified:

The records of the Conservation Division, Kansas Corporation Commission, Wichita, Kansas, of which I have custody indicate that the discovery (first) gas well of the Nichols Field was brought in on March 2, 1955.

Richard Janson Testified:

There was no mineral production on the land when I purchased it nor when I took a deed of conveyance to it in 1946.

[fol. 42]

Paul A. Buser Testified:

The Federal Land Bank received royalty payments under an oil and gas lease with the Gulf Oil Corporation. The first payment under this lease was made December 3, 1956, and the total of such royalty payments received after that date until the time of trial is \$2,017.20. The Bank received cash bonuses and lease income from leasing the property in question in the total amount of \$960.

The following stipulation was entered into:

"Mr. Londerholm: Your Honor, at this time the plaintiff and defendants will stipulate that the figure \$33.15 represents the ad valorem property tax paid by the Federal Land Bank to the county on the undivided one-half interest in the mineral estate for the years 1947 through 1958, inclusive; that figure of \$33.15 being a total for that period of time, 11 years. Is that agreeable?"

"Mr. Jamison: That's right; that's our record. I'm not admitting it is competent, but I admit that has been paid."

(Mr. Buser): The Bank has not paid any other property tax on the property from and after May 25, 1943, and it has had no insurance payments.

Cross examination.**By Mr. Jamison:**

"Q. Mr. Buser, you have given the income of this property shown by your ledger and the income from the lease,

the production. Now those payments do not include the internal expense of the Federal Land Bank in connection with the handling of this action, attorneys' fees, and all other expenses in connection with the foreclosure of this, from the time foreclosure was started until the property was sold. Those figures do not include those expenses. Is that right?"

A. That's right.

[fol. 43] Q. You do not have any way of breaking down these expenses as applied to this particular property?

A. I do not.

Q. You have no opinion at this time as to the amount of these expenses?

A. I have no idea.

Redirect.

Q. Your records do not disclose any attorney's fees having been paid?

A. No.

Q. So we have no evidence on that point whatsoever.

A. No.

Richard Janson Testified:

I acquired the land in question in 1943 from the Federal Land Bank under a contract of purchase for a consideration of \$3,500. It was a payment contract and I paid interest on the unpaid balance at the rate of 4½%.

ARGUMENT IN SUPPORT OF MOTION FOR NEW TRIAL

The Court: Well, Mr. Jamison, don't you understand that the Court has to be as concerned about the local government as he is with the United States Government?

Mr. Jamison: I do, if the Court please.

The Court: Other than the ruling which the Court has made after hearing arguments and reading the briefs of the parties, and hearing the evidence presented at the trial of this matter, have you a basis for saying the Court was prejudiced against your client?

Mr. Jamison: Now here is my point, exactly: Our government is and must be a government of laws and not of men. The law is clear on this point. We are a federal instrumentality. The law is clear on the point that a federal instrumentality is immune from taxation, unless that immunity is specifically waived. I furnished all that law to the Court. Now the law is on our side and it is, in my opinion, absolutely clear. There are no decisions against it. Now we get an adverse decision.—

The Court: Now, I asked you the question, Do you have any other reason other than that the Court has ruled against you for your stating the Court was prejudiced against your client?

Mr. Jamison: My position is this, if the Court please: If the law is absolutely clear that we are a government instrumentality and that we cannot be taxed unless that immunity is waived, and there is no showing that there is any waiver, if that law is clear, and it is clear and comes down from the Federal Court, and the rulings of the Federal Court on the interpretation of their statutes are for the direction of this Court, then the Court goes out and makes a finding that, in my opinion, is contrary to law, and it has been brought across to the Court time and time and time again, and no contrary authorities have ever been furnished to the effect that we are not entitled to judgment in this case, then, as I said, I can't conclude otherwise than that the Court is prejudiced. I don't know why the Court should be prejudiced against the Federal Land Bank. It is cooperative in character; has no outstanding stock, except the farmer-borrowers; if there is any profit made it is all returned to the farmer-borrowers, and I don't know why the Court should be prejudiced against my client. But what other conclusion can I arrive at, if I am right about the law.

The Court: Then you are saying that you don't have any other reason for basing it on other than that the Court has ruled against you; is that it?

[fol. 45] Mr. Jamison: Oh, yes, I do. Oh, yes, I do. My basis for making that statement that I think the Court is prejudiced is that there is no law against us, and the Court follows the law.

The Court: You are a lawyer admitted to practice before the Court, Mr. Jamison, and you realize that there are controversies of all kinds before the Court?

Mr. Jamison: Yes, sir, I do.

The Court: And there are different theories presented to the Court?

Mr. Jamison: Yes.

The Court: But the fact alone that the Court rules against you, you conclude that the Court is prejudiced against your client or has other reasons other than what was presented in Court?

Mr. Jamison: Well, how can I conclude otherwise, if the Court please, if the law is all on our side?

CERTIFICATE

I do hereby certify the foregoing counter abstract to be a true and correct abstract of certain portions of the record in the above entitled cause so far as necessary for review of the questions raised by the Specifications of Error by appellant and by this appeal.

Respectfully submitted,

Robert C. Londerholm, Assistant Attorney General.

[fol. 47].

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 41,842

THE FEDERAL LAND BANK OF WICHITA, a Corporation of
Wichita, Kansas, Appellant,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF KIOWA,
STATE OF KANSAS; BEN H. PAXTON, Sheriff; ALICE
CRONIC, County Treasurer; and EUNICE RICH, Clerk of
the District Court; THE STATE OF KANSAS, Intervener,
Appellees.

Syllabus by the Court

1. **Taxation—Doctrine of Implied Immunity and Its Limitations.** As between the state and federal governments the doctrine of implied immunity from taxation has its inherent limitations. The doctrine is aimed at the protection of operations of government and does not extend to those matters which are beyond functions essentially governmental in character. A government may not depart from functions essentially governmental in character and enter into fields of business inherently private in their nature and yet demand protection from taxation behind a shield of implied immunity.
2. **Same—Exemption Strictly Construed—Burden of Proof.** It is universally held that taxation is the rule and exemption is the exception, and that language relied upon as creating an exemption from taxation must be strictly construed. Where one claims immunity from the common burdens of taxation which rest equally upon all, the burden is upon him to establish clearly that he is entitled to the exemption.

3. Same—Federal Land Bank—Action to Enjoin Tax—Exemption. The Federal Land Bank of Wichita (a federal instrumentality) made a loan on real estate. The loan became in default and the bank foreclosed its mortgage and in due time became the owner of the property by virtue of a sheriff's deed. Later, it sold the property, and, in so doing, reserved a mineral interest. At the time of sale the bank had fully recouped its financial loss arising out of the loan and foreclosure of the mortgage. The bank gave oil and gas leases covering the mineral interest retained by it and, upon production being had, received rents, bonuses and royalties therefrom. The county, through its taxing officials, levied and assessed a personal property tax against the bank's interest in the leases. The bank brought an action to enjoin the levy and collection of the tax, claiming that it was exempt. The record is examined and considered and, all as fully set forth in the opinion, it is *held* that under the facts of record the bank has no valid claim for exemption from the tax in question and injunctive relief was properly denied.

Appeal from Kiowa district court; Ernest M. Vieux, judge. Opinion filed August 4, 1960. Affirmed.

Edw. H. Jamison, of Wichita, argued the cause, and Steve W. Church, of Greensburg, and Wm. G. Plested, Jr., of Wichita, were with him on the brief for the appellant.

Robert C. Londerholm, Assistant Attorney General, argued the cause, and John Anderson, Jr., Attorney General, A. K. Stavely, Assistant Attorney General and Mar-[fol. 48] tin A. Aelmore, County Attorney, were with him on the brief for the appellees.

OPINION—Filed August 4, 1960

The opinion of the court was delivered by

Price, J.: The question in this case is whether, under the facts of record, certain personal property consisting of a royalty interest derived from an oil and gas lease owned by the Federal Land Bank of Wichita, a federal

instrumentality (hereafter referred to as the bank), is subject to taxation by the state or a political subdivision thereof.

The trial court held that it is subject to personal property tax, and the bank has appealed.

The background of the matter is this:

In 1922 the bank made a loan of \$3,000 and as security therefor took a mortgage on the quarter section of land in Kiowa county here involved. In 1941 the loan became in default and the bank brought a foreclosure action. On October 10, 1941, judgment was rendered in favor of the bank against the owners in the amount of \$3,306.79, with interest at six per cent, and a decree of foreclosure was entered foreclosing the mortgage and awarding costs of suit to the bank. In due time an order of sale was issued, and on November 24, 1941, the bank bid in the land at sheriff's sale for the sum of \$3,324.37, such sum being the amount of the judgment, interest and costs, less a credit of \$150 arising from a cancellation of the stock issued in connection with the loan. The sale was duly confirmed, and on May 25, 1943, the bank received a sheriff's deed to the premises. During the running of the period of redemption the bank paid no taxes or insurance on the property.

In September, 1942, Richard P. Janson, the present owner of the land, contracted to buy it for \$3,500, and under this contract he paid the interest on the unpaid principal balance. On August 8, 1946, the bank conveyed the property to him by a warranty deed for a total consideration of \$3,500. In the deed of conveyance to Janson the bank reserved an undivided one-half interest in the mineral estate for a period of twenty years from and after May, 1943, and for so long thereafter as minerals are produced on the premises or are being developed or operated. As of the date of conveyance there was no mineral production or prospect thereof from the premises or from land in that vicinity.

It also is to be noted that at the time the bank conveyed the land in question to Janson, reserving the mineral [fol. 49] estate, it had fully recouped its financial loss suffered by reason of foreclosure of its mortgage.

In 1955 a pool of gas was discovered and production of oil and gas was begun, and the land in question is now unitized for oil and gas production purposes with an adjoining quarter section wherein is located a gas well, the source of the oil and gas from which the bank's royalty interest, here sought to be taxed, is derived.

On November 9, 1944, the bank gave a ten-year oil and gas lease to the property, and again on June 3, 1955, the bank granted another oil and gas lease covering it. As of the date of trial of this action, in the spring of 1959, the bank had derived \$960 in rents and bonuses from the two leases, and \$2,017.20 in royalties under the second lease. During the period from 1947 through 1958 the bank paid a total of \$33.15 in real property taxes upon its interest in the mineral estate.

In 1957 Kiowa county, by and through its taxing officials, levied and assessed a personal property tax in the amount of \$46.81 against the interest of the bank in the oil and gas lease and upon the royalty interest derived therefrom for that year. This tax was levied pursuant to the provisions of G. S. 1949, 79-329 to 79-334, which, among other things, provide that for the purpose of valuation and taxation oil and gas leases are declared to be personal property and shall be assessed and taxed as such to the owner thereof.

On August 29, 1958, the bank, under the provisions of G. S. 1949, 60-1121, brought this action to enjoin the levy and collection of the tax, alleging that it is wholly exempt by law from payment of any and all taxes, federal, state, municipal and local, except such taxes as may lawfully be levied and assessed against it upon real estate held, purchased or lawfully acquired by it, as provided by Title 12, U. S. C. A. § 931.

The attorney general, on behalf of the state, was permitted to intervene as a party defendant, and, among other things, the answers of defendants alleged that the bank's authority is strictly circumscribed by the federal statutes under which it was created and exists; that the primary function of the bank is to provide a rural credit system by which credit should be extended to persons engaged in agriculture; that in enacting Title 12, U. S.

C. A., § 931, congress did not intend to and did not exempt from taxation personal property acquired or held by a federal land bank in excess of its statutory powers, nor is such personal property impliedly exempted from [fol. 50] taxation by the federal constitution; that the bank has no power or authority, either express or implied, to enter upon and continue original speculative enterprises and to hold real property interests over protracted periods of time for the purpose of speculating in future profits, rents or royalties that might be obtained from mineral production thereon, and that the written regulation of the Farm Credit Administration, upon which the bank relies for its authority to hold the property in question beyond a period of five years, is wholly void and of no effect.

Upon the issues thus joined the parties proceeded to trial. In denying the injunction sought by the bank and in rendering judgment for defendants and holding the property to be subject to personal property tax, the trial court made findings of fact. Although repetitious in some respects of what already has been related of the factual background, we nevertheless quote them in full:

"1. The Federal Land Bank of Wichita, plaintiff herein, is a corporation duly authorized and organized under an Act of Congress.

"2. In 1922 plaintiff made a mortgage loan of \$3000 upon the the land involved in this case, being the Northeast quarter of Section 21, Township 29, Range 18 in Kiowa County, Kansas. Said loan being in default in 1941 plaintiff commenced an action to foreclose said mortgage in the District Court of said County, being Case No. 4444 in said Court.

"3. Thereafter on October 10, 1941, judgment was rendered in said action in favor of said bank and against the defendant owners of the sum of \$3,306.79 with interest at six percent, and for foreclosure of said mortgage and costs of suit. In due time an order of sale was issued and on November 24, 1941, plaintiff bid in said land at Sheriff's sale for the sum of \$3,234.37, being the amount of the

judgment, interest and costs, less a credit of \$150.00 by cancellation of the stock issued in connection with said loan. Said sale was duly confirmed, and on May 25, 1943, plaintiff received a Sheriff's deed for said premises. During the running of the period of redemption, plaintiff paid no taxes or insurance on said property.

"4. On January 1, 1943, the Farm Credit Administration promulgated the following regulation:

"Holding mineral rights for more than 5 years. In cases where, in connection with a sale of bank-owned real estate,

"the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both "title and possession" of real estate within the meaning of section 13 (Fourth [b]) of the Federal Farm Loan Act (12 U. S. C. 781 [4] [b]). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the banker's opinion it is in the bank's interest to do so, has the approval of the Administration.' (Code of Federal Regulations, Title 6, Par. 10.64.)

[fol. 51] "On June 16, 1941, the plaintiff's Board of Directors had passed the following resolution:

"Whereas, this Board has heretofore ratified and confirmed reservations by The Federal Land Bank of Wichita of minerals or mineral rights in connection with sales of its acquired real estate; and

"Whereas, this Board feels that ordinarily it is to the best interests of the Bank to reserve an interest in minerals or mineral rights in connection with sales of its acquired real estate in order to realize as much as possible from such sales, and so retain such minerals or mineral rights for such periods of time as it is deemed to be for the Bank's best interests,

"Now, Therefore, be it resolved that the Executive Committee of this Bank is hereby authorized and

directed to reserve such interest in the minerals or mineral rights lying in, upon or under real estate sold by it as in the opinion of such Committee is deemed to be to the best interests of the Bank so to do, and to retain such minerals and mineral rights for such periods as may be permissible under the Farm Loan Act as amended, and the rules and regulations promulgated thereunder, and as in the opinion of such Committee are in the Bank's best interests.'

"5. In September, 1942, Richard P. Janson contracted to buy the land for \$3,500 and he and his wife subsequently took title to the land by a special corporation warranty deed dated August 8, 1946, reciting a consideration of \$3,500 wherein the Federal Land Bank reserved an undivided one-half interest in the mineral estate for a period of twenty years from and after May, 1943, and so long thereafter as minerals are produced on the premises or being developed or operated. In 1946, when plaintiff conveyed to Janson and reserved the one-half interest in the mineral estate, it had recouped its loss suffered by reason of the foreclosure of its mortgage on the real estate.

"6. At the time plaintiff reserved the one-half mineral interest in the land there was no mineral production or immediate prospect thereof from the premises or from lands in the vicinity. The land is now unitised for oil and gas production purposes with the Northwest Quarter of Section 21, wherein lies the Pardoe gas well, the source of the gas and oil from which plaintiff's royalty interest is derived. The Pardoe well draws from the Nichols-Mississippian zone pool of gas which was first discovered in 1955.

"7. On November 9, 1944, the plaintiff gave a ten year oil and gas lease to the property to V. C. Rouse. On June 3, 1955, the plaintiff granted the Gulf Oil Corporation a second oil and gas lease to the property. At the time of trial of the present case, plaintiff had derived \$960.00 in rents and bonuses from these two leases and, in addition, \$2,017.20 in royalties under the second lease. From 1947 through 1958, inclusive, plaintiff has paid a total of

\$33.15 in real property taxes upon its interest in the mineral estate.

"8. That the defendant, County of Kiowa, by and through its various agencies levied and assessed certain personal property taxes against the interests of the plaintiff in an oil and gas well and on oil and gas produced from a drilling unit of which plaintiff's mineral reserve became a component part; said taxes were assessed for the year 1957, pursuant to G. S. 1949, 79-329 to 334."

[fol. 52] For its conclusions of law the trial court held:

"1. The Federal Land Bank of Wichita has only those powers granted it by the federal statutes under which it was created.

"2. The Federal Land Bank of Wichita has no power, under the Federal Statutes, to speculate or make profits out of land taken by foreclosure.

"3. The Federal Land Bank has no power, under Federal Statutes, to retain title to foreclosed real estate after such time as it has fully recouped its loss sustained by reason of the foreclosed mortgage transaction, and the retention of title in such circumstances is beyond the legal authority of the Bank.

"4. The Federal Land Bank of Wichita holds title and possession of real property within the meaning of Title 12, United States Code, Par. 781(b), by virtue of its ownership of the mineral estate in Kiowa County.

"5. The Farm Credit Administration has not lawfully granted the Federal Land Bank the special approval required by Title 12, United States Code, Par. 781 Fourth (b) for the Bank to hold title and possession of real property for a longer period than five years.

"6. Congress, in enacting Title 12, United States Code, Par. 931, did not exempt from taxation property held by a federal land bank (1) in excess of its delegated powers, or (2) property held by the land bank in direct contravention of the time limitation imposed by Congress in Title 12, United States Code, Par. 781 Fourth (b).

"7. The defendants in this case are entitled to raise the question of whether the Bank has exceeded or is in violation of its delegated powers as a defense to this action where the plaintiff attempts to avoid payment of taxes arising from property held without legal authority.

"8. The Court will not lend its aid in the enforcement of a claim of exemption founded on illegality.

"9. The holding of the property herein involved by plaintiff is not in exercise of a governmental function but is of the nature of a speculative investment after the governmental function with respect to the original mortgage investment has been accomplished.

"10. Judgment should be entered in this case for defendants, with costs.

"11. The injunction prayed for by the plaintiff is denied."

In this court the bank makes no complaint concerning the trial court's findings of fact and does not contend they are not supported by the evidence. It is contended, however, that they do not support the judgment rendered. Specifically, it is argued (1) that the bank, being an instrumentality of the federal government, is immune from state, local and municipal taxation (*M'Culloch v. State of Maryland*, 4 Wheat. 316, 4 L. Ed. 579, and the many related decisions); (2) the bank, being a federal instrumentality is, as such, exempt from payment of personal property tax; (3) federal statutes and the construction thereof by federal courts are binding on state courts; (4) acts of the bank may not be challenged as [fol. 53] ultra vires by these defendants, and (5) the bank may lawfully reserve and retain mineral interests.

Insofar as here material, Title 12, U. S. C. A., § 781, referred to in conclusions of law 4, 5 and 6, above, reads:

"Every Federal land bank shall have power, subject to the limitations and requirements of this subchapter— . . .

"Fourth. . . .

"To acquire and dispose of— . . .

"(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Farm Credit Administration in writing. Every such bank may carry real estate as an asset, for a period of not exceeding five years, at its normal value but not to exceed the amount of the bank's investment therein at the time of acquisition of such real estate."

Insofar as here material, Title 12, U. S. C. A., § 931, which is referred to in conclusion of law 6, above, reads:

"Every Federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of sections 761 and 781 of this title. . . ."

From conclusions of law 4, 5 and 6, it is apparent the trial court was of the opinion the bank holds title and possession of real property within the meaning of § 781, above, by virtue of its ownership of the mineral estate in question; that the Farm Credit Administration by its regulation, found at 6 CFR, § 10.64 (set out in finding of fact 4, above), had not lawfully granted to the bank the "special approval" required by § 781 for the bank to hold title and possession of real property for a period longer than five years, and that the Congress, in enacting § 931, above, did not exempt from taxation property held by a federal land bank in excess of its delegated powers or in direct contravention of the time limitation imposed by § 781.

There is much to be said for the proposition that the quoted regulation (6 CFR, § 10.64) of the Farm Credit Administration is in reality an invalid attempt by that body to delegate to the various federal land banks the

discretion to determine whether to hold property for more than five years—that is, the regulation purports to permit such holding “when in the bank’s opinion it is in the bank’s interest to do so,” whereas the Congress, in § 781, [fol. 54] has expressly provided that such time limit may not be exceeded without the “special approval” of the Farm Credit Administration—thus lending support to the correctness of the trial court’s ruling that the retention of the mineral interest by the bank is illegal and unlawful and therefore cannot be the basis of a claim of exemption from taxation.

Entirely aside from what has just been said relating to the purported delegation by the Farm Credit Administration to federal land bank of the discretion to determine whether to hold property for more than the five-year period notwithstanding that the Congress, by enacting § 781, has said that such cannot be done without the “special approval” of the Farm Credit Administration, it would appear from an examination of other sections of the federal act creating federal land banks that the only reasonable construction of that portion of § 781 authorizing a federal land bank to hold beyond five years, and of 6 CFR, § 10.64, is that inherently such provisions have reference only to those instances where retention of mineral interests would aid the bank in recouping its loss arising out of ownership of land as a result of its prior loan and foreclosure—in other words, it is logical to conclude that the provisions in question are limited to the furtherance of the governmental function for which the bank was created.

We think, however, there are even stronger and more compelling reasons why the trial court’s judgment denying the bank’s claim of exemption was correct and should be upheld.

We are concerned here with a tax only on personal property (G. S. 1949, 79-329 to 334, above). The fact of the matter is—and it is not contended otherwise—the bank had been made whole and had fully recouped any loss it may have sustained resulting from the foreclosure. The record contains no evidence that the bank retained the mineral interest in question in an effort to recoup any

losses it may have incurred arising out of other loans or bank-held properties—and no contention is made with respect to that. For all the record shows, the mineral interest was retained merely as a “speculative investment” after the governmental function with respect to the original mortgage investment had been accomplished—just as was held by the trial court in its conclusion of law 9, above.

The case of *Clinton v. State Tax Commission*, 146 Kan. 407, 71 P. 2d 857, presented the question whether the compensation received by a woman as a clerk and stenographer [fol. 55] for four federal agencies (one of which was the Federal Land Bank of Wichita) was taxable under our state income-tax law. Concededly, the question was not the same as we have here, but the opinion contains an exhaustive and comprehensive review and discussion of many federal cases dealing with the subject of the immunity from state taxation of instrumentalities of the federal government, beginning with the historic landmark case of *M'Culloch v. State of Maryland*, above. In the interest of brevity we will not burden this opinion with quotations from the Clinton case, but we summarize a number of statements and rules found in that opinion, all of which are supported by federal authorities:

The doctrine of implied immunity from taxation is a necessary development of our dual system of state and federal government and must be given a practical construction which permits both governments to function with the minimum interference each with the other, and that limitation cannot be so varied or extended as seriously to impair taxing powers of the government imposing the tax or the appropriate exercise of the functions of government affected by it. . . . The doctrine has its inherent limitations and is aimed at the protection of operations of government, and does not extend to anything lying outside or beyond functions essentially governmental in character. It does not exist where no direct burden is laid upon the governmental instrumentality. . . . The doctrine of implied immunity from taxation must be given a practical and not a mechanical construction. At some point

the interference becomes too remote to warrant an application of the immunity which has been implied from the sovereign nature of the federal government. When that point is reached the power of the state prevails. Neither government may destroy the other nor curtail in any substantial manner the exercise of its powers. . . . Where the immunity exists it is absolute, resting upon an entire absence of power, but it does not exist where no direct burden is laid upon the governmental instrumentality and where there is only a remote, if any, influence upon the exercise of the functions of government. . . . It has long been held that unless a tax actually hinders or interferes with the efficient exercise of the purposes sought to be accomplished, the doctrine of implied immunity does not apply—that is to say, it is restricted to the protection of functions essentially governmental in character, and, when the particular tax does not violate the reasoning underlying the principle of immunity, namely, the protection [fol. 56] of functions of government—the rule fails. . . . A government may not depart from functions essentially governmental in character and enter into fields of business inherently private in their nature and yet demand protection from taxation behind a shield of implied immunity.

See, also, *Boeing Airplane Co. v. Commission of Revenue and Taxation*, 153 Kan. 712, 716, 717, 719, 113 P. 2d 110.

In *M.-K.-T. Rld. Co. v. State Tax Commission*, 150 Kan. 614, 616, 95 P. 2d 293 (1939), it was said that it must be kept in mind that both federal and state courts in recent years have come to view claims to exemption from the common burden of taxation much more strictly than formerly, and it is universally held that taxation is the rule and exemption is the exception, and that a party claiming an exemption must prove all facts necessary to show that he is entitled thereto. (*Clinton v. State Tax Commission*, above, syl. 5; *Clements v. Ljungdahl*, 161 Kan. 274, 167 P. 2d 603; *Defenders of the Christian Faith, Inc. v. Horn*, 174 Kan. 40, 44, 254 P. 2d 830; *Midwest Solvents Co. v. State Comm. of Rev. & Taxation*, 183 Kan. 104, 108, 325 P. 2d 511; *Kansas State Teachers Ass'n v. Cushman*, 186 Kan. 489, 501, 351 P. 2d 19.)

Application of the rules and principles stated in the Clinton case to the facts before us can lead to but one result.

One of the primary functions of the bank is to extend credit to persons engaged in agriculture and to make loans on the security of real-estate mortgages. The acquisition and holding of real estate is a mere incident to its money-lending functions and is authorized only when it is a necessary incident to those functions. § 781, above, by its very terms, provides that the bank has the power to acquire and dispose of parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees or mortgages held by it. When the bank, in 1946, retained the mineral interest in question it had absolutely no further financial interest to protect with respect to the property and the loan previously made thereon. Any loss which may have been incurred had been fully recouped. There remained no further federal governmental purpose to be served by retention of the mineral interest. There is nothing in the act authorizing a federal land bank to hold or acquire property interests for profit or speculation. We believe that the Congress, in enacting the exemption provision in § 931, above, intended that the tax immunity there provided should apply only when the bank is engaged in [fol. 57] the furtherance of its governmental function. Under the facts before us, how does the imposition of this personal property tax impede or interfere with the legitimate function of the federal instrumentality involved? It does not—and when the reason for the rule of tax immunity, namely, the protection of functions of government—fails—the rule fails.

No reason has been shown why the state and county should be denied the right to tax the property here involved which is not being held and used in furtherance of a federal purpose. The judgment of the trial court denying to the bank the injunctive relief sought was correct and is affirmed.

[fol. 58] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 41,842

[Title omitted]

**MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR
REHEARING—Filed August 9, 1960**

Comes now The Federal Land Bank of Wichita, a corporation, Wichita, Kansas, appellant in the above entitled case, by and through its attorney, Donald J. Robinson, and moves the court for an order granting the appellant twenty (20) days from August 15, 1960, to file with the court a Motion for Rehearing for the following reason, to-wit:

Edw. H. Jamison of Wichita, Kansas, the attorney who argued the cause, and Wm. G. Plested, Jr., General Counsel and President of the appellant corporation, who was with Mr. Jamison on the brief, are both absent from the State of Kansas at this time and will not return to the State until Monday, August 15, 1960.

Donald J. Robinson, Attorney for Appellant.

Duly sworn to by Donald J. Robinson, jurat omitted in printing.

[fol. 59]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 41,842

[Title omitted]

ORDER ALLOWING MOTION FOR EXTENSION OF TIME TO FILE
MOTION FOR REHEARING—August 9, 1960

Now comes on for decision the motion of the appellant for additional time to file motion for rehearing of this cause and thereupon, after due consideration by the court, it is ordered that said motion be allowed.

[fol. 60] Petition for rehearing covering 20 pages filed August 31, 1960 omitted from this print.

It was denied, and nothing more by order October 5, 1960.

[fol. 61]

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 41,842

[Title omitted]

ORDER DENYING MOTION FOR REHEARING—October 5, 1960

Now comes on for decision the motion of the appellant for a rehearing of this cause and thereupon, after due consideration by the court, it is ordered that said motion be denied.

[fol. 63] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 64]

SUPREME COURT OF THE UNITED STATES

No. 614, October Term, 1960

FEDERAL LAND BANK OF WICHITA, Petitioner,

VS.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF
KIOWA, STATE OF KANSAS, et al.

ORDER ALLOWING CERTIORARI—March 20, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Kansas is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.